

DOCUMENT RESUME

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[Medical Expenses of Employees Mother]. April 11, 1977. 5 pp.

**Decision re: John R. Clyne; by Robert P. Keller, Deputy
Comptroller General.**

**Issue Area: Personnel Management and Compensation: Compensation
(305).**

Contact: Office of the General Counsel: Civilian Personnel.

**Budget Function: General Government: Central Personnel
Management (805).**

Organization Concerned: Agency for International Development.

**Authority: 22 U.S.C. 1156(b). 5 U.S.C. 5584(a) (Supp. IV).
B-186565 (1977). Foreign Affairs Manual, vol. 3, sec. 681.2,
681.6. 4 C.F.R. 91, 91.2, 91.5(c).**

**Employee appealed ruling of liability for erroneous
medical expenses incurred by his mother, who did not meet
definition of "dependents." However, medical expenses of
eligible dependents are valid allowances, and, in the absence of
indication of fault or fraud, repayment of erroneous medical
expenses was waived. (DJH)**

01979

Peter Iannicelli

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-173783.156

DATE: April 11, 1977

**MATTER OF: John R. Clyne - Medical Expenses of Employee's
Mother**

DIGEST: AID erroneously paid hospital and outpatient medical expenses incurred by employee's mother since applicable regulations do not authorize payment of medical expenses of employee's mother because she does not meet definition of "dependents" in section 681.6a, volume 3, FAM, of the Uniform State/AID/USIA Regulations. Payment of medical expenses of eligible dependents of employees is a form of allowance. Thus, erroneous payment of medical expenses of employee's mother is waived since there is no indication of fraud, misrepresentation, fault or lack of good faith on part of employee or his mother.

This action concerns an appeal by Mr. John R. Clyne, an employee of the United States Agency for International Development (AID), from a ruling by the Controller's Office of AID which held that Mr. Clyne was liable for amounts paid by AID for medical expenses incurred by his mother.

The record reveals that, after the death of Mr. Clyne's father in April 1974, the employee's 85 year old mother, Urielle O. Clyne, was authorized by an official travel order dated May 3, 1974, to travel as the employee's dependent from Grenada to Brazil where the employee was stationed. On October 24, 1974, while Mr. Clyne was outside the country on a temporary duty assignment, his mother suffered a heart attack and was admitted to an emergency hospital by the State Department Medical Officer. The medical authorization listed her as the employee's dependent and the authorizing officer certified that Mrs. Clyne met the conditions of eligibility for medical services at Government expense. The hospital bill was paid directly to the hospital by AID and subsequent outpatient bills were reimbursed by AID. The total paid by AID in behalf of the employee's mother was \$1,975.02.

In June 1975 AID determined that the employee's mother was not a dependent for medical purposes. Accordingly, the AID Controller's Office in Brazil issued a Bill for Collection on

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June 16, 1975, to John R. Clyne in the amount of \$1,975.02. Mr. Clyne has appealed from that determination by AID.

The statute authorizing payment of medical expenses of dependents of officers and employees stationed abroad, 22 U.S.C. § 1156(b) (1970), provides in pertinent part that:

"(b) In the event a dependent of a United States citizen officer or employee of the Service who is stationed abroad, incurs an illness or injury while such dependent is located abroad, which requires hospitalization or similar treatment, and which is not the result of vicious habits, intemperance, or misconduct on his part, the Secretary may, in accordance with such regulations as he may prescribe, pay for that portion of the cost of treatment of each such illness or injury that exceeds \$35 up to a maximum limitation of one hundred and twenty days of treatment for each such illness or injury * * *."

The statute does not define the term "dependent," but rather leaves such definition to the implementing regulations. The Secretary of State has promulgated regulations which define "Dependents." Section 681.6, volume 3, Foreign Affairs Manual, Uniform State/AID/USIA Regulations provides, in pertinent part, as follows:

"a. Dependents include the following members of an employee's family as indicated in the employee's personnel file maintained by the Department of State or applicable agency:

"(1) Spouse.

"(2) Children who are unmarried and under 21 years of age or, regardless of age, are incapable of self-support, provided such incapacity existed on the 21st birthday of the child. * * *"

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Thus, in contrast to the regulations governing overseas travel by dependents, the above-quoted regulation does not include the parents of the employee in the definition of "dependents" for purposes of the statute entitling dependents to free medical services.

Mr. Clyne argues that, since the regulation does not specifically exclude an employee's parents from the definition of "dependents," his mother is within the category of dependents and, therefore, the Bill for Collection was issued in error. However, the agency's Assistant General Counsel for Management and Administration has advised us that the definition was developed by the Office of Medical Services of the Department of State and has been uniformly applied by State, AID and USIA. Hence, we find no error in the AID Controller's interpretation of the definition.

Mr. Clyne then argues that, if the definition excludes parents, it is arbitrary and prejudicial. He states that his mother is regarded by regulation as his dependent for travel, housing allowances, cost of living allowance, and several other purposes, but, illogically, is not regarded as his dependent for health purposes. He adds that the Government sponsored medical insurance plan refused to insure his mother and that the Medicare and Medicaid laws do not apply overseas. In view of this Mr. Clyne states that an employee with a dependent mother is placed in a precarious position by virtue of overseas employment with the Government.

Despite the equities inherent in Mr. Clyne's situation and the obvious inconsistency between the medical regulations and the travel regulations in the treatment of dependent parents of employees stationed abroad, the Congress has chosen to leave the coverage of dependents under 22 U.S.C. § 1156(b) to the State Department and we cannot state that the Secretary of State has abused such discretion.

Mr. Clyne also argues that if his mother is not his dependent, then she should be billed for the medical services rendered, not he. However, his mother was admitted to the hospital on the basis that she was his dependent, and he signed the medical authorization form for her when he returned from his TDY trip. Also, he paid other expenses for her and was reimbursed therefor by AID. Therefore,

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it is our opinion that Mr. Clyne is liable for the expenses incurred by his mother.

In view of the above, and since neither the applicable statute or regulations specifically provide for medical services for an employee's parents, the payment by AID of the hospital expenses and outpatient medical bills incurred by Mr. Clyne's mother was erroneous.

Erroneous payments of pay or allowances, other than travel or relocation allowances, may be waived by the Comptroller General of the United States or the head of an agency if collection "would be against equity and good conscience and not in the best interests of the United States." 5 U.S.C. § 5584(a) (Supp. IV, 1974). The regulations implementing this provision are set forth at 4 C.F.R. part 91 (1976). The pertinent provision of 4 C.F.R. § 91.5(c) (1976) reads as follows:

"* * * Generally these criteria will be met by a finding that the erroneous payment of pay or allowances occurred through administrative error and that there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee or member or any other person having an interest in obtaining a waiver of the claim.
* * *"

It is clear that the authorization and payment of the medical bills of Mr. Clyne's mother were improper and constituted administrative error, and we find no indication in the record of fraud, misrepresentation, fault or lack of good faith on the part of Mr. Clyne or his mother. However, there is a question as to whether payments for medical expenses of dependents are pay and allowances under the waiver statute and regulations.

The authority to waive claims pursuant to 5 U.S.C. § 5584(a) is limited to erroneous payments of "pay" or "allowances." The term "allowances" is defined in 4 C.F.R. § 91.2 (1976) as follows:

"(d) 'Allowances' as they relate to an employee include but are not limited to payments for quarters, uniforms, and overseas

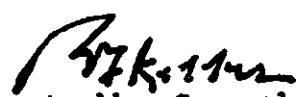
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cost of living expenses, but exclude travel and transportation allowances, and relocation expenses payable under 5 U.S.C. 5724a"

The above definition lists a number of items that are identified as allowances and also states that the definition "includes but is not limited to" the specific items listed. The waiver statute is remedial legislation which should be construed broadly, and its legislative history indicates an intent to include all allowances, other than travel allowances. Therefore, we believe that the definition of allowances should be broadly construed for waiver purposes, except for travel and relocation allowances which are specifically excluded under the statute and regulation. See B-186565, January 27, 1977.

The above definition of allowances expressly includes "overseas cost of living expenses." The payment of medical and hospital expenses incurred by dependents of AID employees stationed abroad is a part of the general medical policy of the Department of State and other agencies, including AID, which participate by formal agreement in the Medical and Health Program of the Department of State, 3 F.A.M. § 681.2. As such, the Medical and Health Program is a personnel benefit for overseas employees and helps them meet the additional expenses of living overseas. We conclude, therefore, that medical services and payments thereunder are a form of allowance which may be considered for waiver action under 5 U.S.C. § 5584 and the implementing regulations.

On the basis of the foregoing, the claim of the Government against Mr. Clyne arising out of the erroneous payment of his mother's medical bills, in the total amount of \$1,975.02, is hereby waived.


Deputy Comptroller General
of the United States